



May 1, 2002

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2002-2284

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162141.

The City of Houston (the "city") received a request for eleven types of records relating to a fatality automobile accident, including dispatch tapes; offense, accident reconstruction, and autopsy reports; video and photographs; witness statements; and other information. You state that the city has no information that is responsive to items nos. 9 and 11 of the request. Chapter 552 of the Government Code does not require the city to release information that did not exist when this request for information was received or to prepare new information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that information held by the city that is responsive to the rest of this request is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You state that the requested information relates to completed investigations. Thus, the city must release this information under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, this exception is not other law that makes information confidential for the purposes of section 552.022.¹ Thus, the city may not withhold the requested information under section 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You indicate that the city is a civil service municipality under chapter 143 of the Local Government Code. You claim that the requested information is confidential under section 143.089(g) of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain for its own use a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

¹ *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived).

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. See *City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). The court stated that the provisions of section 143.089 governing the content of the civil service file reflect "a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual's written consent." *Id.*; see also *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App. – San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You state that the information submitted as Exhibits 2A through 2F relates to an investigation conducted by the Internal Affairs Division of the Houston Police Department. You inform us that this investigation did not result in a finding of any misconduct on the part of the police officer who was involved in the accident or in any disciplinary action against the officer. Based on your representations, we conclude that the submitted information that relates to the internal affairs investigation and the police officer's employment relationship is confidential under section 143.089(g) of the Local Government Code. The information that is confidential under section 143.089(g) must be withheld from disclosure under section 552.101 of the Government Code.

We note, however, that the information submitted as Exhibits 2A through 2F does not relate solely to an internal affairs investigation, in that the police department also conducted a criminal investigation of the traffic accident. Confidentiality under section 143.089(g) may not be engrafted onto information that is created for other law enforcement purposes and does not relate solely to the officer's employment relationship. See *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d at 564-65. Furthermore, the city does not claim that the information submitted as Exhibit 3 is confidential under section 143.089(g). Therefore, to the extent that the submitted information relates to the criminal investigation, we address the city's claim that this information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that raises section 552.108 must reasonably explain,

if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) is applicable to information relating to a concluded investigation that did not result in a conviction or a deferred adjudication. See Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). You state that Exhibits 2A through 2F and 3 pertain to an investigation that concluded in a determination by the Harris County Grand Jury to "no bill" the suspect. Based on this representation, we conclude that the city has shown that section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The city must release basic front-page information, including a detailed description of the offense, even if that information is not literally located on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the information that relates to the criminal investigation under section 552.108(a)(2).

In summary, the submitted information that pertains to the internal affairs investigation is confidential under section 143.089(g) of the Local Government Code. The city must withhold that information under section 552.101 of the Government Code. The submitted information that relates to the criminal investigation is excepted from disclosure under section 552.108(a)(2) of the Government Code. The city must release basic information, however, under section 552.108(c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

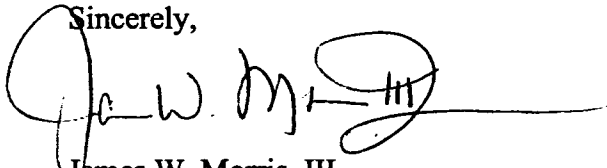
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 162141

Enc: Submitted documents

c: Mr. Willie High Coleman, Jr.
Bates & Coleman
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(w/o enclosures)